

SANDRA LEWIS

IBLA 88-306

Decided February 14, 1990

Appeal from a decision of the Alaska State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease AA 48233-I.

Reversed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

A decision denying a petition for reinstatement of a noncompetitive oil and gas lease filed pursuant to 30 U.S.C. § 188(c) (1982) will be reversed on appeal where appellant has established that she was ill at the time the payment was due, and that such illness was the proximate cause of the late payment.

APPEARANCES: Sandra Lewis, pro se.

OPINION BY ADMINISTRATIVE JUDGE KELLY

By notice dated January 15, 1988, the Alaska State Office, Bureau of Land Management (BLM), held that noncompetitive oil and gas lease AA 48233-I had terminated due to late payment of rental. The rental payment had been received on January 11, 1988, in an envelope postmarked January 4, 1988. On January 26, 1988, the lessee, Sandra Lewis, filed a petition for reinstatement, accompanied by a check for \$25 and a letter from her doctor. By decision dated February 26, 1988, appellant's petition for reinstatement was denied. That decision was timely appealed to this Board.

On appeal, appellant states, "My mother was seriously injured Nov. 25 and I subsequently became depressed" (Statement of Reasons (SOR) at 1). Attached to appellant's SOR is a copy of a hospital discharge summary, noting that a Sylvia Rose was hospitalized following an accident from November 26 until December 17, 1987, at which time she was discharged "in a halo brace." Appellant also submits a March 17, 1988, letter from her own doctor stating the stress of her mother's accident caused appellant to suffer from depression; she was unable to concentrate; and her bills piled up during this period. Moreover, the doctor states: "She

did not sleep at night, she lost weight due to inadequate nutrition and the outcome was a severely compromised level of functioning. * * * [S]he normally is very responsible and this problem was due to mental incapacity beyond her control."

Pursuant to 30 U.S.C. § 188(b) (1982), an oil and gas lease on which there is no well capable of production in paying quantities automatically terminates by operation of law upon the lessee's failure to pay rental

on or before the anniversary date of the lease. The anniversary date of appellant's lease is January 1 and her payment for 1988 was not received until January 11, 1988; thus, it is clear that her lease automatically terminated. A class I reinstatement of a lease terminated pursuant to 30 U.S.C. § 188(b) (1982) is provided for by 30 U.S.C. § 188(c) (1982)

and 43 CFR 3108.2-2 if the payment was tendered within 20 days after the due date and the failure to timely pay was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

The envelope containing appellant's rental payment was postmarked January 4, 1988, which is after the lease anniversary date. We have previously held that mailing a payment after the due date is not indicative of reasonable diligence. Larremore Petroleum Partnership, 94 IBLA 30 (1986); Anthony F. Hovey, 79 IBLA 148 (1984). Thus, if appellant's petition for reinstatement is to be granted, she must succeed in establishing that her late payment was justifiable.

[1] We have previously found that late payments were justifiable where the death or illness of the lessee or a member of the lessee's close family occurred with immediate proximity to the anniversary date and was a causative factor in the failure to timely tender a rental payment. Hubert W. Scudder, 35 IBLA 58 (1978); Billy Wright, 29 IBLA 81 (1977); Fredres E. Laubaugh, 24 IBLA 306 (1976); Louis Samuel, 8 IBLA 268 (1972).

We find appellant's late payment to have been justifiable. Although appellant's mother was released from the hospital about two weeks before the anniversary date of the lease, the discharge record submitted by appellant indicates that her mother's recuperation was not complete at the time of discharge. More importantly, the record indicates appellant's mental depression persisted during the period when reasonable diligence would have required mailing the payment. The statements submitted by appellant's doctor indicate that her own difficulties continued beyond the date of her mother's release from the hospital, and that mental incapacities, which stemmed largely from her mother's accident and were beyond appellant's control, were the proximate cause of her failure to timely tender the rental payment. Thus, we find that appellant's lease should be reinstated under Class I.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's decision is

reversed and the case is remanded to BLM for action consistent with this decision.

John H. Kelly
Administrative Judge

I concur:

James L. Burski
Administrative Judge